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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

No. 679

M. D. (DOC) BENNETT,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FOURTH CIRCUIT, AND BRIEF  
IN SUPPORT THEREOF.**

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE  
JUSTICES OF THE SUPREME COURT  
OF THE UNITED STATES:

Your Petitioner respectfully shows:

I.

**SUMMARY STATEMENT OF MATTERS INVOLVED.**

1. A criminal Bill of Indictment was filed at the March Term Thereof, A. D. 1944, by the Assistant United States Attorney for the Eastern District of North Carolina, in the Fayetteville Division, charging in Five (5) Counts as follows: \* \* \* (R. pp. 1-4).

2. Motion was made to quash the search warrant and to suppress the evidence obtained thereunder in due time. This motion was, by the Court, overruled, and thereafter on the trial of the action, objection was made to the offer by the Government of evidence obtained as a result of the search warrant. However, the Court admitted the evidence and the Defendant excepted (R. p. 11).

3. The Motions being denied, the Petitioner was found guilty by a jury of the crime charged (R. pp. 10-11), and was subsequently sentenced to Five (5) Years on Count One; One (1) Year on Count Two; One (1) Year on Count Three; One (1) Year on Count Four; Pay a fine of \$500.00 on Count Five. Prison sentences in Counts Two, Three and Four to run concurrently with sentence in Count One and to stand commuted until payment of said fine (R. pp. 10-11).

4. An appeal from this judgment was taken to the Circuit Court of Appeals for the Fourth Circuit which affirmed the judgment of the District Court on October 16, 1944 (R. p. 14).

## II.

### QUESTIONS PRESENTED.

1. Whether or not a search warrant is valid, based upon an affidavit, which only sets forth that the affiant, an Investigator, Office of Price Administration, "*has good reason to believe and does believe* that in and upon certain premises within the Eastern District of North Carolina, to-wit, the premises known as the M. 'Doc' Bennett, Residence and place of business and particularly described as follows: \* \* \* *there have been and are now located and concealed certain property used as the means of committing a felony in violation of the Statutes of the United States,*

to-wit: Ration order No. 3, Ration Order No. 5-C, under the Second War Powers Act. Section No. 100 and Section No. 72 under Title No. 18 of the United States Criminal Code.  
\* \* \* (R. pp. 4-6)."

2. Whether or not a search is valid, based upon testimony and affidavit of the Investigator, set forth in the search warrant itself, as follows: *"he has reason to believe and does believe that in and upon certain premises within the Eastern District of North Carolina, to-wit, the premises known as the M. (Doc) Bennett residence and place of business and more particularly described as follows: \* \* \* there is now located and concealed certain property used as the means of committing a felony, in violation of a law or laws of the United States, to-wit: Ration Coupons, for Sugar, Gasoline, Shoes, Fuel Oil, the said coupons being concealed in, on or about said property, which coupons were not acquired by said M. "Doc" Bennett in a lawful manner, and upon information and belief the affiant doth verily believe that such Ration Coupons and Ration Evidences were acquired by M. "Doc" Bennett by purloining said property consisting of or acquiring said coupons and knowing them to have been stolen, or counterfeited, which offenses are considered a felony under Section #100 and #72 of title #18 of the United States Criminal Code, and is also a violation of Ration Order #5-C, under the Second War Powers Act."*

The particular grounds for probable cause for the issuance of the search warrant consist of facts furnished by M. H. Eastburn, who testified under oath and made affidavit as follows:

*"That Investigators for the Office of Price Administration had acquired information both Oral and written which indicates the said M. "Doc" Bennett had obtained and was selling and offering for sale certain*

*U. S. Gov't properties, known to have been stolen from the U. S. Gov't. to-wit: Ration Coupons.*

"That the Investigators for the Office of Price Administration *had acquired information the said information both Oral and written* indicating that the said M. "Doc" Bennett *had acquired and was using* on his property certain plates, dies, impressions, presses, machines and devices for use in the making, printing, of counterfeit ration evidences, documents, coupons especially gasoline ration coupons and sugar ration coupons and certificates, in violation of Ration Order #3 and Ration order number #5-c, under the Second War Powers Act, and or in violation of sections #100, and section #72, of the U. S. Criminal Code (Title #18)." (R. pp. 6-8).

### III.

#### STATUTES INVOLVED.

Constitution of the United States, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Espionage Act, June 15, 1917, c. 30, Title XI, sec. 3, 40 Stat. 228; 18 U. S. C. A. 613:

"PROBABLE CAUSE AND AFFIDAVIT. A Search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched."

Espionage Act, June 15, 1917, c. 30, Title XI, sec. 4, 40 Stat. 228; 18 U. S. C. A. 614:

"EXAMINATION OF APPLICANT AND WITNESSES. The judge or commissioner must, before issuing the war-



rant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them."

Espionage Act, June 15, 1917, c. 30, Title XI, sec. 5, 40 Stat. 228; 18 U. S. C. A. 615:

"AFFIDAVITS AND DEPOSITIONS. The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist."

Espionage Act, June 15, 1917, c. 30, Title XI, sec. 6, 40 Stat. 228; 18 U. S. C. A. 616:

"ISSUE AND CONTENTS OF WARRANT. If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a civil officer of the United States duly authorized to enforce or assist in enforcing any law thereof, or to a person so duly authorized by the President of the United States, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the person or place named, for the property specified, and to bring it before the judge or commissioner."

#### IV.

#### STATEMENT OF THE CASE.

On February 24, 1944, an investigator for the Office of Price Administration appeared before a United States Commissioner and applied for the issuance of a warrant authorizing a search of appellant's premises. The application was supported by the investigator's affidavit (R. pp. 4-6). On the basis of the affidavit and the oral testimony

of the investigator, the Commissioner issued a warrant authorizing a search of appellant's premises for certain property specified in the warrant, and also authorizing a seizure of the property (R. pp. 6-8). Pursuant to the warrant a search was made of appellant's premises and gasoline ration coupons and sugar ration coupons were seized (R. p. 9), however, no plates, dies, impressions, presses, machines or devices for use in the printing or making of counterfeit ration documents, coupons, certificates, especially Gasoline Ration Coupons, Sugar Ration Coupons and Sugar Certificates, were found upon the premises.

## V.

### REASONS FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals did not pass upon the first question (1) "whether the *affidavit* upon which the search warrant was issued *showed probable cause for the issuance of the search warrant*," but contented itself to pass upon the second question (2) "whether the *affidavit* upon which the search warrant was issued *was sufficient to justify the search for and seizure of the stolen and counterfeit ration coupons*." (R. pp. 15-16).

2. The failure of the Circuit Court of Appeals to pass upon the first question and its final judgment (R. pp. 15-16) denies unto the Petitioner the rights guaranteed under the Fourth Amendment to the Constitution of the United States.

3. The Circuit Court of Appeals, by its opinion (R. pp. 15-16), does not show that this *most vital question*, "the *sufficiency of the showing of probable cause in the affidavit*," as contended by the Petitioner (R. pp. 15-16), was considered by the Court, however, its affirmance of the ruling of the District Court on *this question* conflicts with

applicable decisions of this Court and more particularly as laid down in *Grau v. United States*, 287 U. S. 127, and is in conflict with the decisions of the Circuit Court of Appeals of the District of Columbia (*Schencks v. United States*, 2 Fed. (2nd) 186), the Circuit Court of Appeals for the Seventh Circuit (*Veeder v. United States*, 252 Fed. 414) and the Circuit Court of Appeals for the Eighth Circuit (*Wagner v. United States*, 8 Fed. (2nd) 581).

WHEREFORE, your Petitioner prays that a writ of certiorari issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket, No. 5245, *M. D. (Doc) Bennett*, Appellant, *v. United States of America*, Appellee, to the end that this cause may be reviewed and determined by this Honorable Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court as to Petitioner be reversed by this Honorable Court, and for such further relief as to this Court may seem proper.

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*Of Counsel.*

Dated November 15, 1944.